

PATENT

Application No.: 10/609,132

Attorney Docket: 0133.00

REMARKS

Claims 1-3, 6-34, and 36-41 are presently pending in the case. Claims 1, 22, and 31 have been amended. Claims 42-46 have been cancelled with prejudice or disclaimer, Applicant reserving the right to further pursue the claims in a continuing application.

Reconsideration of the present case in view of the remarks herein is requested.

Claim rejections under 35 USC 102

The Examiner rejected claims 1-3, 6-12, 14, 19-21, 31-34 and 36-39 under 35 USC 102(b) as being anticipated by U.S. Patent 5,753,302 to Sun et al (hereinafter Sun et al). The rejection is traversed.

Sun et al does not anticipate claim 1, for example. To sustain a section 102 rejection, the reference relied upon, must disclose each and every element of the claimed invention. Non-disclosure of a single element of the claim negates anticipation. Claim 1 is to an apparatus for filling a chamber, the apparatus comprising a hopper adapted to contain a bulk supply of a powder pharmaceutical formulation, the hopper comprising an outlet; and a vibratable membrane capable of disturbing a medium within the hopper, the disturbance of the medium being sufficient to control the flow of powder through the outlet, wherein the bulk supply of powder is spaced from the vibratable member when the vibratable member is not vibrating and whereby the chamber may be filled by powder flowing through the outlet and into the chamber. Sun et al does not disclose all that is recited in claim 1. Sun et al describes a dispenser for propelling objects towards a substrate. The objects are propelled from a membrane to the substrate. More specifically, Sun et al does not disclose a system where the powder is spaced from the membrane when the membrane is not vibrating. Thus, Sun et al does not disclose an outlet through which powder flows in a controlled manner. It is respectfully submitted that these positively recited features are absent in the teachings of Sun et al, thereby precluding a section 102 rejection. Thus, the Examiner is respectfully requested to reconsider the language of claim 1 and withdraw the rejection thereunder.

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Claims 22 and 31 are also not anticipated by Sun et al. As in claim 1, claim 22 recites that a vibratable member that is spaced from powder in the hopper when the vibratable member is not vibrating. Accordingly, claim 22 is not anticipated by Sun et al. Similarly, claim 31 recites "providing a bulk supply of a powder pharmaceutical formulation in a hopper and providing a separation between the powder and a vibratable membrane when the vibratable membrane is not vibrating." Claim 31 is therefore also not anticipated by Sun et al.

The Examiner rejected claims 1-3, 6, 8, 9, 11-16, 22-24, 28-34, 36, 37, 39, 40, and 42-45 under 35 USC 102(b) as being anticipated by U.S. Patent 6,168,666 to Sun (hereinafter Sun). The rejection is traversed.

Sun does not anticipate claim 1. As discussed above, claim 1 is to an apparatus for filling a chamber, the apparatus comprising a hopper adapted to contain a bulk supply of a powder pharmaceutical formulation, the hopper comprising an outlet; and a vibratable membrane capable of disturbing a medium within the hopper, the disturbance of the medium being sufficient to control the flow of powder through the outlet, wherein the bulk supply of powder is spaced from the vibratable member when the vibratable member is not vibrating and whereby the chamber may be filled by powder flowing through the outlet and into the chamber. Sun is much like Sun et al (discussed above) and does not disclose all that is recited in claim 1. Sun describes a dispenser for propelling objects towards a substrate. The objects are propelled from a membrane to the substrate. More specifically, Sun does not disclose a system where the powder is spaced from the membrane when the membrane is not vibrating. Thus, Sun does not disclose an outlet through which powder flows in a controlled manner. It is respectfully submitted that these positively recited features are absent in the teachings of Sun, thereby precluding a section 102 rejection. Thus, the Examiner is respectfully requested to reconsider the language of claim 1 and withdraw the rejection thereunder.

Claims 22 and 31 are also not anticipated by Sun. As in claim 1, claim 22 recites that a vibratable member that is spaced from powder in the hopper when the vibratable member is not vibrating. Accordingly, claim 22 is not anticipated by Sun. Similarly, claim 31 recites "providing a bulk supply of a powder pharmaceutical formulation in a hopper and providing a separation between the powder and a vibratable membrane when the vibratable membrane is not vibrating." Claim 31 is therefore also not anticipated by Sun.

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The Examiner rejected claims 22 and 25-30 under 35 USC 102(b) as being anticipated by U.S. Patent 5,826,633 to Parks et al (hereinafter Parks et al). The rejection is traversed.

Parks et al does not anticipate the claims. Independent claim 22 recites, inter alia, "a vibratable member positioned in, on, or near the hopper so that the vibratable member is spaced from powder in the hopper when the vibratable member is not vibrating, the vibratable member being capable of fluidizing the powder in the hopper." Parks et al does not disclose such fluidization. Accordingly, claim 22 is not anticipated by Parks et al.

The balance of the rejected claims depend from one of independent claims 1, 22, or 31 and are allowable over Sun et al, Sun, and Parks et al for at least the same reason as the claim from which they depend.

Claim rejections under 35 USC 103(a)

The Examiner rejected claims 17, 18 and 41 under 35 USC 103(a) as being unpatentable over Sun et al in view of Sun. The rejection is traversed. Neither Sun et al nor Sun disclose all features set forth in independent claims 1 or 31. Accordingly, dependent claims 17, 18 and 41 are not anticipated by Sun et al and Sun. Applicant requests withdrawal of the rejection.

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Conclusion

The Examiner is respectfully requested to reconsider the present case and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

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